

DENNIS VANDYKE,

Plaintiff,

v.

MACK McKELLER, et al.,

Defendants.

Plaintiff does not specify under what authority he is filing the instant Complaint. Because none of the defendants are even arguably state actors the Court will construe his Complaint as one

pursuant to 28 U.S.C. § 1331. Federal courts have the power under 28 U.S.C. § 1331 to award damages occasioned by infringements by federal officials of constitutionally protected interests. See Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971). In a Bivens suit a plaintiff must establish that one of his constitutional rights was violated by a federal official See id. An attorney appointed by a federal court to represent an indigent criminal defendant is not a “federal official.” Cf. In Polk County v. Dodson, 454 U.S. 312 (1981)(public defenders are not “state actors” in 42 U.S.C. § 1983 context). Accordingly, Plaintiff fails to state a Bivens claim against Mack McKeller. Likewise, neither the Federal Government nor one of its agencies is a proper defendant in a Bivens suit. See Radin v. United States, 699 F.2d 681, 684 (4th Cir. 1983)(Bivens recognized action against federal officers sued in individual capacities, but not against the United States). Consequently, Plaintiff has failed to state a claim against any of the Defendants.

IT IS THEREFORE ORDERED that Plaintiff’s Complaint is **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2) for failure to state a claim.

Signed: June 28, 2006

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

